

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES O'NEIL WIGGIN,

Plaintiff,

v.

RN SCHNEIDER, LT. MATTHEWS,
JOHN DOE SERGEANT,
DEPARTMENT OF CORRECTIONS,

Defendant.

CASE NO. C13-5884 RJB-KLS

ORDER ON REPORT AND
RECOMMENDATION

This matter comes before the court on Magistrate Judge Karen L. Strombom's Report and Recommendation (Dkt. 35) that Defendants Motion to Dismiss (Dkt. 22) should be denied in part, granted in part, and Plaintiff's Motion to Amend the Complaint (Dkt. 29) should be granted. The parties were given until February 24, 2014 to file objections. Dkt. 35 at 8. No objections were filed by that date.

The Report and Recommendation states that, under Eleventh Amendment immunity and § 1983's official capacity requirement, defendant Department of Corrections (DOC) is entitled to summary judgment on plaintiff's § 1983 claim and should be dismissed as a defendant from this

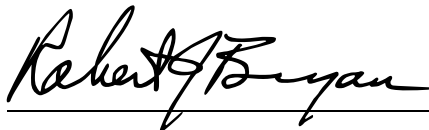
1 action. Dkt. 35 at 6. However, this is a motion to dismiss and inclusion of the phrase “summary
2 judgment” is an error. DOC is entitled to dismissal from this matter.

3 The Court, having reviewed the Report and Recommendation of United States Magistrate
4 Judge Karen L. Strombom (Dkt.35), and the remaining record, does hereby find and **ORDER**:

- 5 1. The Report and Recommendation (Dkt. 35) is **ADOPTED**, and further clarified with
6 the foregoing language.
- 7 2. Defendants’ Motion to Dismiss (Dkt. 22) is **GRANTED** as to plaintiff’s claims
8 against Department of Corrections, and **DENIED** as to plaintiff’s remaining claims.
9 Any claim against Department of Corrections is **DISMISSED** with prejudice.
- 10 3. Plaintiff’s Motion to Amend (Dkt. 29) is **GRANTED**.
- 11 4. This matter is **RE-REFERRED** to the magistrate for further proceedings.

12 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
13 to any party appearing *pro se* at said party’s last known address.

14 Dated this 26th day of February, 2014.

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17 ROBERT J. BRYAN
18 United States District Judge
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